

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant

v.

BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Defendant

In re:

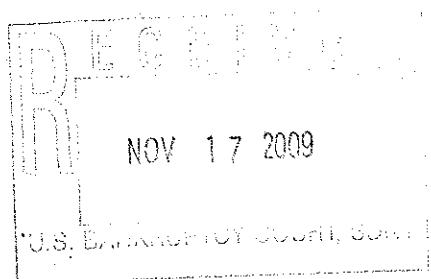
BERNARD L. MADOFF,

Debtor

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)



We are filing this in opposition to the Trustee's position regarding the determination of "net equity" in the BLMIS case.

We invested in BLMIS around 1989. Even at a conservative rate of return, during the boom years from our investment until the collapse of BLMIS, we would certainly have had much more in our balance than a "cash in/cash out" total. There is no other entity that we are aware of that uses such an unfair cash in/cash out approach to gains or losses. To our knowledge, court awards, loans, business debts, etc. always have at least interest calculated into the total amount due. In addition, as mentioned above, the years in question were boom years in the stock market and the economy in general, and compound returns, in even the most conservative funds would have yielded substantially more than cash in/cash out.

We gather that the final outcome of this matter will serve as a very strong precedent for determining how money will be disbursed or even "clawed back" from investors in BLMIS. We, for example, are relatively small investors, with a total balance on our last statement (Nov. 30/08) of approximately \$593,000 which constituted about ¾ of our life savings. We are in our mid-70's and retired. Is not this major financial loss punishment enough for investing "unwisely"? Now we have to worry about whether the definition that will be settled on will entitle us to or disentitle us from any portion of that money, or indeed if it will enable the Trustee to demand even more money from us through a claw-

back. Had we invested conservatively in any other fund, or even bought tax free bonds, we are sure that we would have had a substantial balance in December of 2008, including money withdrawn and conservative compound returns on investments.

In addition to the loss of the bulk of our life savings, it looks like we, along with others like us, now face years of legal entanglements. Is the definition of "net equity" going to, at some later point, further strip us of what little money remains, or even put us into debt, on the grounds that somehow if we used "too much" of the money we thought we had in BLMIS for things like paying taxes on capital gains that in the end did not exist, we are to be further punished by having to pay back the money we took out?

We propose that "net equity" for the purposes of this matter be set at the value reflected in the customer's last statement. A compromise position could define "net equity" the same as the Internal Revenue Service (IRS) does in handling Madoff claims in their allowances for loss deductions. We understand that the IRS is defining the loss to customers as their balances as of January 1, 2003 plus subsequent additions and minus subsequent withdrawals.

The cash in/cash out calculation is patently unfair, inequitable and not in the interests of justice. The total final customer balance method of defining "net equity" is fair, reflecting what honest and innocent investors truly believed to be their actual investments. Alternatively, the above-described method that we think the IRS is using to define loss is much closer to an equitable and fair determination than is the cash in/cash out calculation proposed by the Trustee.

We are active people with broad interests. But this whole process has all the earmarks of embroiling us for years to come in worry over money instead of allowing us the time we have left to pursue more worthwhile interests.

Thank you for your consideration of our position in this very unpleasant and complicated matter.

Sincerely,

*Herbert Gamberg*

Herbert Gamberg

*Ruth Gamberg*

Ruth Gamberg

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Attention: Brief ("Not guilty" definition) - Makoff case